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A.M. _____ P.M. _____

MAY 05 2014

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
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Attorneys for Bench Sewer District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE DISSOLUTION OF
THE BENCH SEWER DISTRICT OF ADA
COUNTY, IDAHO

Case No. CV-OT-2012-06454

SUPPLEMENTAL ORDER
EXTENDING DISSOLUTION DATE
AND APPROVING DISTRIBUTION
PLAN

This matter having come before the Court pursuant to Section 42-3239, Idaho Code, on the Verified Application of Bench Sewer District of Ada County, Idaho ("District") for a Supplemental Order i) extending the date upon which the District shall be dissolved and ii) approving the plan for distribution of the District's assets which are not being transfer to the City of Boise City, Idaho ("City"), the Court makes the following findings and determinations which are supplemental to the Court's Order entered May 9, 2012:

SUPPLEMENTAL ORDER EXTENDING DISSOLUTION DATE AND APPROVING DISTRIBUTION PLAN
- 1 -

EXHIBIT A

REC'D DEC 2 2015

1. Under the provisions of Section 42-3239, Idaho Code, the District has shown good cause for extending the date upon which the District shall be dissolved from December 1, 2014 to December 1, 2016.
2. The Distribution Plan described in the Supplemental Application is a reasonable, rational and fair method of disbursing the District assets which are not being transferred to the City of Boise City, Idaho.

NOW, THEREFORE, IT IS HEREBY ORDERED:

The District's Supplemental Application is hereby granted; the Distribution Plan as described in the Supplemental Application is approved; and, the District shall be dissolved as of December 1, 2016.

DATED this 5 day of ^{May}~~April~~, 2014.

PATRICK H. OWEN

PATRICK H. OWEN, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Bart W. Harwood
HOLLAND & HART LLP
P.O. Box 2527
Boise, ID 83701-2527

- | | |
|-------------------------------------|----------------|
| <input checked="" type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Hand Delivered |
| <input type="checkbox"/> | Fax |
| <input type="checkbox"/> | E-mail |

CHRISTOPHER D. RICH

INGA JOHNSON

Clerk

SEAL

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THE BENCH SEWER DISTRICT OF ADA
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VERIFIED APPLICATION FOR
SUPPLEMENTAL ORDER
EXTENDING DISSOLUTION DATE
AND APPROVING DISTRIBUTION
PLAN

COMES NOW, the Bench Sewer District of Ada County, Idaho ("the District"), and pursuant to Section 42-3239, Idaho Code, hereby applies to the Court for a supplemental order (i) extending the date upon which the District will be deemed dissolved, and (ii) approving the plan for distribution of the District's surplus assets. This application is based upon the following grounds, facts and circumstances:

EXTENDING THE DATE OF DISSOLUTION

1. On May 9, 2012, in the above captioned matter, the Court entered its Order Approving Transfer and Assumption and Establishing a Date of Dissolution (the "Order").

APPLICATION FOR SUPPLEMENTAL ORDER EXTENDING DISSOLUTION DATE AND APPROVING DISTRIBUTION
PLAN - 1

2. Pursuant to the District's application, the Order provides that "...the District shall be dissolved on December 1, 2014."

3. Idaho Code Section 42-3239 provides in part that "...upon good cause shown, the court may extend the date upon which the district shall be dissolved."

4. The steps necessary to accomplish the transfer of the District sewer collection facilities to the City of Boise ("City") are proceeding as contemplated in the District's initial Application and the Order; and, the District presently expects the transfer to occur precisely when and as represented and planned on November 30, 2014 ("Transfer Date") such that commencing December 1, 2014, the City will have fully assumed ownership and responsibility for the operation and maintenance of the District's sewer collection system.

5. As also contemplated in the Application, following December 1, 2014, it will be necessary for the District to liquidate certain assets which are not being transferred to the City and thereafter distribute such funds according to the Distribution Plan described below.

6. A question has arisen concerning generally the District's powers and its very existence following the date of dissolution and specifically whether the District will be eligible to continue its liability insurance. To resolve the question, the District seeks by this application a modification of the date of dissolution from December 1, 2014, to December 1, 2016, which will allow ample time for the District to wind up its affairs, completely liquidating and distributing assets which are not being transferred to the City while maintaining its liability insurance coverage.

APPROVAL OF THE DISTRIBUTION PLAN

7. Because of the uncertainty of future expenditures, the exact amount will not be known until sometime after the Transfer Date of November 30, 2014; however, the District estimates there is approximately \$7 million in assets that are not being transferred to the City

("Surplus Funds"). The Surplus Funds consist primarily of reserves maintained for system and equipment repair and replacement. The District has operated and maintained 1.13 miles of sewer pipe serving approximately 11,600 residential and commercial users. The Surplus Funds will also include proceeds from the sale of the District's two pieces of real estate.

8. In the initial Application in this matter, pursuant to Section 42-2339 Idaho Code, the District represented that "[p]rovisions have been made for the liquidation and disbursement of District assets and infrastructure not intended to be transferred to the City." The Order adopted the same statement; however, no details were described in either the Application or the Order.

9. The District in this Supplemental Application seeks the Court's order approving a detailed description of the plan for distributing the Surplus Funds as follows ("Distribution Plan").

10. Section 42-3239, Idaho Code appears to be the only relevant law addressing the dissolution of sewer districts; and, that section at subsection 42-3239 (1)(e) simply requires the determination as set forth above, namely that "...provisions have been made..." There is otherwise no applicable Idaho statutory or case law addressing the disposition of surplus assets upon dissolution of a sewer district; and, no guidance has been identified in the statutes applicable to other taxing districts such as irrigation districts.

11. The Board of Directors of the District has determined that the fundamental rationale of the Distribution Plan shall be that the Surplus Funds will be paid to the owners of property located within the District generally in proportion to the periodic sewer service charges currently assessed to the property owners. Over recent years, the sewer service charge to all residential properties has been a flat fixed amount of \$13.65 per month per residential unit. This amount, on average, accurately reflects the typical residential usage of the sewer collection and

treatment systems. The sewer charges to all commercial accounts, however, are based upon the average monthly volume of water consumed by the specific property or properties on that customer account as measured over the non-irrigation months during the previous winter. Consequently, for example, a facility such as a large hospital is charged substantially more for sewer service than a drive-through coffee stand.

12. The Distribution Plan consists of three mechanisms to accomplish distribution of the Surplus Funds. First, a period during which the District is levying no service charges to any patrons ("Free Service"). The Free Service period began December 1, 2013 and will continue through the Transfer Date.

13. The second mechanism of the Distribution Plan is mailing checks ("Cash Distribution") to the owners of the property within the District as of a certain date ("Record Date"). Upon the approval of this Supplemental Application, the District Board of Directors will select as the Record Date a date subsequent to the approval of this Supplemental Application and prior to the Transfer Date. By this method an estimated \$5 million will be disbursed to approximately 11,600 account holders. The amount of each payment will be calculated as a multiple of the monthly sewer service charge assessed to that customer account during the billing periods prior to the Record Date. Because the residential service charges have all been the same amount, all residential accounts will receive the same amount per residential unit. Payments to commercial accounts will also be calculated as the same multiple of their most recent monthly sewer service charges. The commercial account payments will therefor vary in amount, exactly as the commercial sewer service charges have varied. Delinquent account balances will be paid by offset and deduction from the Cash Distribution check. These offsets will enable the District to avoid certification of delinquent account balances to the County Treasurer in 2014. There are

approximately 800 accounts with varying amounts of credit balances. These credit balances will be added to the Cash Distribution checks for those accounts.

14. A major portion of the Surplus Funds will be disbursed through the Free Service and Cash Distribution described above. The remaining amount ("Reserve Amount") will be retained by the District to fund i) the remaining operations of the District through the Transfer Date including the cost of the District's annual rehabilitation work on the system piping, ii) a contingency amount for non-scheduled system maintenance and other expenses which may occur after the Cash Distribution, but before the Transfer Date, and iii) expenditures after the Transfer Date necessary to the final conclusion of literally all District activities, including without limitation, the expense of final audits, payroll taxes and tax reports, IRS 1099 forms, director fees, legal fees, accounting fees. The District's real property probably will not be liquidated until after the Transfer Date.

15. The third and final mechanism in the Distribution Plan is payment to the City of the final balance of the Reserve Amount in a lump sum which the City will apply as a credit against the sewer service charges levied by the City to the former District accounts after the Transfer Date ("City Credit"). This procedure is contemplated in Section 5 of the District's Agreement with the City as modified in Addendum No. 2. (Exhibit C to the initial Application). The amount of the payment will be whatever amount is remaining from the Reserve Amount after payment of all expenses incurred in the wind-up of all District activity and affairs. . The payment of this amount to the City will occur as the last and final act of the District once all obligations have been retired and there is literally no further action to be taken by the District. This payment will occur as soon as possible, but not later than November 30, 2015.

16. Because the Surplus Funds have been accumulated gradually over the 50 plus years of the District's existence, it is impossible to disburse the Surplus Funds in the exact

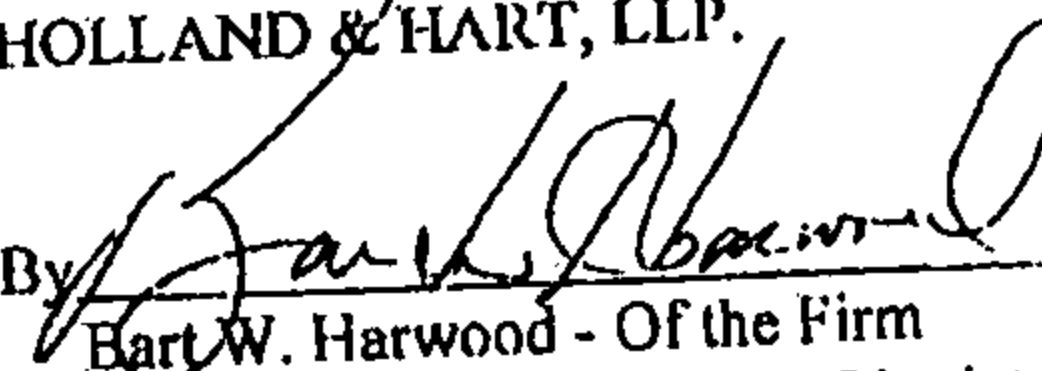
amounts to precisely the same people who contributed to the surplus. Some properties have changed ownership many times. There will likely be some properties that change ownership just prior to the Record Date resulting in a new owner receiving the Cash Distribution. Other ownership changes will occur after the Cash Distribution, but before the City Credit is implemented. Nevertheless, considering all circumstances, the Board of Directors of the District has concluded that the Distribution Plan described above is a reasonable, rational and fair method of disbursing the Surplus Funds.

WHEREFORE, the Applicant prays this Court enter its order:

1. Establishing December 1, 2016, as the date upon which the Bench Sewer District of Ada County, Idaho, shall be deemed dissolved, and
2. Approving the Distribution Plan.

DATED this 15th day of April, 2014.

HOLLAND & HART, LLP.

By 
Bart W. Harwood - Of the Firm
Attorneys for Bench Sewer District

VERIFICATION

STATE OF IDAHO)


) ss.

County of Ada)

I, Lewis C. Duvall, Chairman of the Board of Directors of the Bench Sewer District of Ada County, Idaho, being first duly sworn upon oath, state that I have read the foregoing Application for Supplemental Order Approving Transfer and Assumption and Establishing a Date of Dissolution, and I believe the facts and representations stated therein are true.


Lewis C. Duvall

SUBSCRIBED AND SWORN to before me this 15th day of April, 2014.


Notary Public for Idaho
Residing at Ada County, Idaho
My Commission Expires: 1-2-2019

